IN THE HIGH COURT OF DELHI AT NEW DELHI

**Crl.M.C. No.406/2005**

# K.P.G.Nair ..... Petitioner
! through: Mr. Ravi Kumar Aggarwal, Advocate
Mr. Manoj Taneja, Advocate

VERSUS

$ State & Ors. ..... Respondents
^ through: Ms. Rekha Aggarwal, Advocate
Ms. Anju Aggarwal, Advocate for the respondent.

% **D**ATE OF DECISION: 10-09-2007

**CORAM:**

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

**: PRADEEP NANDRAJOG, J.**(Oral)

1. Petitioner has been impleaded as accused No.4 in the complaint filed by respondent No.2. As accused No.4, in the memo of parties he is described as under :-

'*Mr.K.P.G.Nair, Executive*'

2. Material allegations against the petitioner and other living human beings impleaded as co-accused, i.e. accused Nos. 2, 3 and 5 are in para 10 of the complaint. Following is

averred :-

> "10. That the Accused No.1 is the company and accused Nos.2 to 5 are its Principal Officer and have committed an offence punishable under Section 141 of Negotiable Instrument Act as amended, 1988."

3. The averments in the complaint fall short of actionable averments in view of the law laid down as per the following judgments :-

"1. *K.P.G.Nair Vs. M/s. Jindal Menthol India Ltd.* JT 2000 (Suppl.) SC 519

2. *Katta Sujatha (Smt.) Vs. Fertilizers and Chemicals Travancore Ltd. & Anr.* (2002) 7 SCC 655

3. *Monaben Ketanbhai Shah & Anr. Vs. State of Gujarat & Ors.* 2004 (3) JCC (NI) 158

4. *S.M.S.Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr.* 2005 (7) SCALE

5. *Sabitha Ramamurthy & Anr. Vs. R.B.S.Channabasavardhya* JT 2006 (12) 20

6. *S.M.S.Pharmaceuticals Ltd. Vs. Neeta Bhalla & Anr.* 2007 (3) SCALE

7. *Saroj Kumar Poddar Vs. State (NCT of Delhi) & Anr.* JT 2007 (2) SC 233

8. *P.Rajarathinam Vs. State of Maharashtra & Ors.* (2000) 10

SCC 529

9. *N.Rangachari Vs. Bharat Sanchar Nigam Ltd.* JT 2007 (6) SC 292

10. *K.Srikanth Singh Vs. North East Securities Ltd. & Anr.* JT 2007 (9) SC 449

11. *Raghu Lakshminarayanan Vs. M/s. Fine Tubes* JT 2007 (5) SC 552

4. Suffice would it be to note that where the main accused is a corporate entity, vis-a-vis living human beings impleaded as accused, there have to be positive averments that they were incharge of and were responsible to the company for the conduct of the business of the company or that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of said living human being.

5. The reason is obvious. Under Section 141 of the N.I. Act, 1881 vicarious liability of a company is extended to the shoulders of such persons.

6. But for Section 141 of the N.I. Act, 1881, pertaining to a cheque issued by a company, such persons would not be vicariously liable for the debt of the company.

7. Before concluding, I may further note that in the

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summoning evidence recorded, not a word has been whispered vis-a-vis the liability of the petitioner.

8. Petition is accordingly allowed.

9. The complaint and the summoning order dated 7.8.1998 against the petitioner is quashed.

10. No costs.

September 10, 2007 **PRADEEP NANDRAJOG, J.**
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